



AN ACT CLARIFYING THAT RESPITE CARE WORKERS MAY BE EMPLOYED BY A FAMILY MEMBER; REQUIRING TRAINING AND EDUCATIONAL MATERIALS TO BE PROVIDED TO AN INDIVIDUAL EMPLOYING A RESPITE CARE WORKER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Liability training program and materials for respite care. (1) The department, in conjunction with the department of labor and industry, shall develop a training program and educational materials on labor law and liability issues related to the employment of a person by an individual for respite care services under the exemptions provided in 39-3-406(1)(p), 39-51-204(1)(y), and 39-71-401(2)(u). The educational materials must provide information on the labor law requirements applicable to an individual hiring a person for respite care services.

(2) The department shall make the training materials available to providers of community-based services for people with developmental disabilities that serve as the organized health care delivery system for respite care funds available from the department for use by individuals who hire and pay a person to provide respite care to a family member or a person for whom they are the legal guardian.

(3) To qualify for the respite care funds available from the department, an individual shall:

- (a) receive training offered by a provider; and
- (b) sign a statement acknowledging that the individual has completed the training and has read the related educational materials.

Section 2. Respite care and employment responsibilities -- liabilities. (1) Contingent upon approval of the program by the federal government for purposes of receiving federal medicaid funds, the department may make payment to an approved, certified, and qualified medicaid provider who passes through the payment on behalf of a family to a person providing respite care for individuals who, because of age or infirmity, are unable to care for themselves as provided under 29 U.S.C. 213. A qualified medicaid provider who passes through

payment may not be considered an employer by the department for the purposes of workers' compensation, unemployment insurance, or wage and hour requirements.

(2) The department through administrative rule, waiver of a state or federal program providing payment for respite care, or a pilot program may not require a qualified medicaid provider to assume employer responsibilities or liabilities if the family chooses to negotiate the respite care agreement and the qualified provider does not:

(a) control the person who provides respite care; or

(b) direct the respite care provided by the person.

(3) (a) The department may provide an option to families to choose self-directed care.

(b) The department shall continue to provide families the choice of negotiating respite care by using a local qualified medicaid provider to provide pass-through payment and benefiting from the exemptions provided under 39-3-406(1)(p), 39-51-204(1)(y), and 39-71-402(2)(u).

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 53, chapter 20, part 2, and the provisions of Title 53, chapter 20, part 2, apply to [sections 1 and 2].

Section 4. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
SB 0463, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2009.

Speaker of the House

Signed this _____ day
of _____, 2009.

SENATE BILL NO. 463

INTRODUCED BY WANZENRIED, FUREY

AN ACT CLARIFYING THAT RESPITE CARE WORKERS MAY BE EMPLOYED BY A FAMILY MEMBER;
REQUIRING TRAINING AND EDUCATIONAL MATERIALS TO BE PROVIDED TO AN INDIVIDUAL
EMPLOYING A RESPITE CARE WORKER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.